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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,482	02/02/2001	Richard A. Shimkets	15966-577A, CIP3 (Cura-77	7782

7590

03/05/2002

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EXAMINER

ANDRES, JANET L

ART UNIT

PAPER NUMBER

1646

DATE MAILED: 03/05/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/775,482

Applicant(s)

SHIMKETS ET AL.

Examiner

Janet L. Andres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-47 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-26, drawn to detection of PDGFD antigens, classified in class 435, subclass 7.1 and class 424, subclass 9.1.
- II. Claims 27-35, drawn to methods of receptor activation, classified in class 435, subclass 7.1.
- III. Claims 36-39, drawn to methods of inhibiting cell growth, classified in class 435, subclass 7.1.
- IV. Claims 40-42, 46, and 47, drawn to nucleic acids and means of expression, classified in class 435, subclasses 69.1, 320.1, and 325, and 536, subclass 23.5.
- V. Claims 43-45, drawn to polypeptides, classified in class 530, subclass 350.

The inventions are distinct, each from the other because of the following reasons:

The methods of Group I are not related to those of Group II. They require different reagents and have different goals and different outcome measures.

The methods of Group I are not related to those of Group III. They require different reagents and have different method steps, different goals, and different outcome measures.

The methods of Group I are not related to the nucleic acids of Group IV. The nucleic acids can not be used in or detected by the methods of Group I.

The methods of Group I are distinct from the polypeptides of Group V because the polypeptides can be detected in other ways, such as activity assays.

The methods of Group II are not related to those of Group III. They require different reagents and have different method steps, different goals, and different outcome measures.

The methods of Group II are not related to the nucleic acids of Group IV. The nucleic acids can not be used in or detected by these methods.

The methods of Group II are distinct from the polypeptides of Group V because the polypeptides have other uses, such as the generation of antibodies.

The methods of Group III are not related to the nucleic acids of Group IV. The nucleic acids can not be use in or detected by the methods.

The methods of Group III are not related to the polypeptides of Group V. The polypeptides can not be used in or detected by the methods.

The nucleic acids of Group IV are not related to the polypeptides of Group V. They differ structurally and functionally, can not be used together or interchangeably, and have non-coextensive searches and considerations.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the searches required for the different Groups are not coextensive, restriction for examination purposes as indicated is proper.

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This application contains claims directed to the following patentably distinct species of the claimed invention:

For Group II, the species are

- a) Methods affecting the PDGF alpha receptor
- b) Methods affecting the PDGF beta receptor.

The two receptors have different binding properties and different characteristics; interaction with one would not render interaction with the other obvious

If Group II is elected, Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 27, 28, and 31 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet Andres, Ph.D., whose telephone number is (703) 305-0557. The examiner can normally be reached on Monday through Friday from 8:00 am to 5:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, Ph.D., can be reached at (703) 308-6564. The fax phone number for this group is (703) 872-9306 or (703) 872-9307 for after final communications.

Communications via internet mail regarding this application, other than those under U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [yvonne.eyler@uspto.gov].

All Internet email communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark Office on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Janet Andres, Ph.D.
March 4, 2002


YVONNE EYLER, PH.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER